

**TESTIMONY OF
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BEFORE THE UNITED STATES SENATE

**COMMITTEE ON COMMERCE, SCIENCE &
TRANSPORTATION**

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today. I am Steven K. Berry, Senior Vice President of Governmental Affairs at the Cellular Telecommunications & Internet Association (CTIA) representing all categories of commercial wireless telecommunications carriers, including cellular and personal communications services (PCS), manufacturers, and wireless Internet providers.

CTIA is pleased that the FCC's Spectrum Task Force has chosen to examine comprehensive spectrum management and believes that this report is an important first step towards positive spectrum management reform beneficial to wireless consumers and the wireless industry. Spectrum is the key ingredient. Efficiently and effectively managed, it will enable us to continue to build out our service areas, improve service quality, offer innovative new services to

help wireless technology touch the lives of all American consumers, and contribute to our nation's economy.

In my testimony before you today I would like to discuss the wireless industry reaction to the Task Force Report. First, the Report positively addressed many issues and I would like to highlight some of these. Second, I would like to discuss the particular issues of spectrum rights, interference and the need for additional spectrum. Last, I would like to talk about some of the issues that were not addressed in the Report and discuss where the wireless industry would suggest spectrum policy go from here.

Reforming our nation's spectrum policies is of paramount importance to the wireless industry because additional spectrum will be necessary to serve consumers needs in the future. Reform of the spectrum management process, particularly how spectrum is allocated, is an essential step in ensuring that the wireless industry will have a known, predictable path to more spectrum over the next decade and beyond. A certain, sure path for spectrum allocation is vital to our plans to meet the increasing demands of consumers for mobile wireless voice and data services. The tremendous effort that the Spectrum Policy Task Force has expended in developing the Task Force Report – a significant first step in the spectrum policy reform process – must be applauded. At the same time, a great deal of challenging work remains to be done because the benefits of reform can only be realized if critical details are resolved effectively. The need for spectrum policy reform cannot be overstated, however, and CTIA believes such reform can, and indeed must, occur in the near future.

In general, CTIA supports the key elements of new spectrum policy identified in the Report. First, CTIA supports maximizing the flexibility of spectrum use through the adoption of “flexible” allocation and service rules established before spectrum is assigned or made available

to new uses, so that these rights can be factored into auction decisions. However, the grant of unbridled flexible use to incumbent licensees who do not have a market incentive to use spectrum efficiently may cause interference with third-party operations, create inequities that harm competition and consumers, and perpetuate – instead of fixing – inefficient allocation and assignment schemes.

Second, CTIA has traditionally supported, and continues to support, incentives designed to promote efficient use of the spectrum. Certain basic mechanisms for promoting efficiency, such as rigorous pre-allocation cost-benefit analyses and licensing practices that encourage applicants with concrete and realistic spectrum use plans, can and should be applied to all spectrum bands. CTIA also agrees that in those instances where market forces are lacking, alternative measures to improve efficiency should be considered.

Furthermore, CTIA concurs with the Task Force that clearly defining the rights and responsibilities of spectrum users, especially the rights and responsibilities regarding interference protection, is a key element of reform. CTIA believes that a periodic review of the Commission's rules is also essential, provided those reviews are timed and executed in a manner that does not undermine efforts and resources invested by licensees in bringing communications services to the American public.

Spectrum Rights.

CTIA generally agrees with the Task Force's conclusion that "one size does not fit all" when it comes to effectively managing spectrum and supports the Task Force's recommendation that future spectrum policies should move away from command-and-control regulation towards an increased reliance on both the exclusive use and commons models, where appropriate. The exclusive use model, with its "property-like" rights of exclusivity, flexibility and transferability,

creates a strong incentive to put spectrum to its highest valued use and should be applied to most spectrum bands. The potential for harmful interference from unlicensed systems raises a possible conflict with the exclusive use model. For this reason, the authorization of unlicensed “underlay” operations in licensed spectrum should be approached with extreme caution. Clear and explicit policies and procedures must be in place to protect licensed users from harmful interference caused by these types of operations prior to authorization and widespread deployment. In a similar vein, the secondary markets mechanism of increasing access to licensed spectrum – rather than an “easements” approach – will best fulfill the Commission’s goals of encouraging more efficient, more effective use of the spectrum.

The wireless industry sees new and innovative growth in the marketplace each day. Some members of this committee have shown an interest in advancing deployment of Wi-Fi and many of our members have acquired this new technology and are making it part of their business plan. We understand that additional “commons” spectrum may be needed to accommodate these new unlicensed technologies. Recently, the NTIA, FCC, Department of Defense and industry representatives came together and agreed to modify the United States’ position on unlicensed devices in the 5 GHz band for the World Radio Conference. The agreed position provides 255 MHz (between 5470 MHz and 5725 MHz) for unlicensed devices by resolving the interference concerns of federal users, principally the Department of Defense. This also provides globally harmonized spectrum for unlicensed technologies. CTIA is pleased that this consensus has been forged. This would appear to satisfy additional spectrum needs for unlicensed technologies. We note, however, that providing yet more unlicensed spectrum is still under consideration in or near spectrum bands where CMRS licensees operate. Thus, it is essential that the existing right of licensed users to remain free from interference and the existing responsibilities of unlicensed

users to remedy any such interference should it occur must be made explicit if any additional unlicensed allocations occur. Unlicensed users should gain no new rights above and beyond the current circumstances under which they operate, including the right to protection from interference. Additionally, as encouraging as these new technologies are, we must not lose sight of the fact that obtaining increased access to additional *harmonized* and *licensed* spectrum is the most pressing challenge facing the CMRS industry, both in the near and far terms.

Interference.

CTIA supports the broad concept of understanding interference and protecting users. Especially, as CTIA member companies and others examine the issue of unlicensed spectrum, there is strong emphasis on the importance of guarding against harmful interference. CTIA agrees that it is essential to establish a more quantitative approach to interference management that accurately reflects real-time spectrum use and provides incumbent licensees with greater certainty regarding the right to be protected from interference. While CTIA supports the general concept of establishing of a clearly defined “threshold” to set maximum permissible levels of interference, the precise meaning of the Report’s “interference temperature” approach remains unclear, and CTIA cannot support the concept without understanding how the theory would be rendered into practice. Any proposed interference threshold must be conclusively demonstrated, based on actual tests, to protect licensed operations from interference before being implemented in any band.

Additional Spectrum.

Currently CMRS carriers have access to only 189 MHz of spectrum. In November of last year, the federal government--with the help of many members of this committee--affirmatively allocated 90MHz of additional spectrum for licensed wireless use. We are very pleased with this

decision and would like to commend the NTIA and FCC for their extensive efforts on this issue. The best way to boost growth to the economy is to make wise and practical spectrum allocation decisions based on a clearly demonstrated need. Wireless minutes are growing by an average of 68 percent over the past three years, and tens of millions of new cell phone users are expected to enter the market in the next several years. The wireless industry will surely need more spectrum over time to accommodate consumers' appetite for improved quality and new services--including limitless data capabilities, and ubiquitous service areas.

Other Issues Must Be Addressed.

The wireless industry believes that this Task Force Report addressed many issues of great importance; however, perhaps what is as important are several issues that the report did not address. The Task Force highlights the importance of sound spectrum decisions, spectrum efficiency, and rational planning, yet doesn't address these very important spectrum management issues. First, no thorough examination of spectrum can be conducted that ignores big blocks of spectrum. We do not believe that inefficient users of spectrum should be let off the hook—including broadcasters, federal users, satellite, etc. Positive market incentives are needed to maximize this limited resource. These efforts should include positive incentives for users who are not typically forced by market pressures to make their spectrum more efficient.

The 2 GHz Mobile Satellite Service (MSS) proceeding is a good example of the importance of spectrum reform for such users. Prior even to obtaining their initial licenses, MSS proponents requested an ancillary terrestrial component ("ATC") for their businesses to be viable. CTIA has argued that the Commission should consider such requests – the proposal to provide an entirely new and separate service, combined with evidence that the original service is

not economically viable – to be a signal that the spectrum at issue should be a candidate for reallocation. In spite of this evidence, the FCC recently granted the surviving MSS licensees the right to provide ATC (albeit, under significant conditions). In essence, this allows them to provide some form of terrestrial service in the satellite spectrum they obtained for free. The FCC should not reflexively resort to the “easy fix” of giving inefficient or commercially non-viable incumbents flexibility to provide any service under the guise of increasing innovation.

CTIA recognizes that the underlying problem here is the lack of market incentives to use spectrum efficiently. Therefore, CTIA strongly supports the Task Force’s recommendation that the Commission consider a statutory proposal for Congress to assess whether the Open-Market Reorganization for the Betterment of International Telecommunications Act of 2000 (ORBIT Act) should be clarified to permit the Commission to utilize competitive bidding when considering applications for global and international satellite services.

Second, I believe this report underemphasized the importance of systematic long-term spectrum planning. The report needs to examine the importance of harmonizing our spectrum allocations with the rest of the world and think ahead as to how to accommodate the growing needs of the spectrum users, including the public safety community.

We were pleased that NTIA recognized the importance of this goal in making their affirmative decision in the 3G Viability Assessment, and wish the Task Force report had shown greater emphasis on harmonization in its blueprint for the future. Harmonization is crucial to the wireless industry. Wireless manufacturers, in particular, need to create products that possess the flexibility to operate globally. Harmonization is more efficient, is vital to economies of scale, and enhances the United States position as a global competitor.

Third, I find it inexcusable that the Task Force failed to address in this report how to facilitate a long-term plan to improve public safety over the next twenty years. Since September 11th, we have heard the calls from our public safety community for updated 21st Century technology so that they can effectively communicate with one another in the event of another terrorist attack on this nation. Yet, this report fails to explain how and where public safety will be able to evolve to new technology that will provide interoperability, security, video streaming, as well as data and voice communication. The public safety community awaits a way to communicate with each other at all levels of government, as well as interface with national security apparatus. New demands for homeland security have intensified the pressure for money to spent by those on the local, state and federal levels. Throwing money away to create an uneven patchwork of updated systems makes no sense. When we discuss spectrum policy in this country, we must layout a practical blueprint to accommodate the needs of all spectrum users--especially public safety--over the next few decades.

Last, the wireless industry strongly supports creation of a relocation fund to provide reimbursement to federal entities that are relocated from their spectrum assignment. Last year, the President called for the creation of a relocation fund in his FY03 Budget, and the Administration submitted legislation to the Senate and House. We anticipate that the Administration will not only support the concept again in their Budget for FY2004, but also will quickly resubmit draft legislation. We hope the Senate will introduce it and work towards passing the bill into law. A relocation fund injects certainty into our current reimbursement process. It streamlines the spectrum management process by creating a migration plan for the federal entity that is beneficial to not only the government but to the wireless industry and the consumer. Auction revenues are used to directly fund relocation and modernization. Costs are

identified with clear rights for both parties ahead of time, creating definitive timelines to expedite relocation. The practical effect is that the federal entity can upgrade and transition to more modern and efficient systems, while freeing up valuable harmonized spectrum that will bring new and innovative services to the marketplace for consumers. Again, we hope that each of you will lend your support.

Future Wireless Needs.

To close, I would like to emphasize what the wireless industry feels is necessary to achieve a spectrum policy that makes sense for all. First and foremost, we heartily advocate the creation of a spectrum relocation fund. The Task Force put forth a list of legislative recommendations, and the creation of a spectrum relocation fund was one suggestion. This mechanism is a critical part of the delivery of the 90 MHz to the marketplace and will assist in injecting practicality to the spectrum reimbursement process. Creation of such a reimbursement process would help the Department of Defense to receive compensation as they migrate out of their existing spectrum and upgrade their aging and spectrum inefficient systems, establish concrete timelines and certainty for the wireless industry, and ultimately expedite innovative services to the market for the consumer. This report does look at many of the vexing problems facing the current process of spectrum allocation. However, we must look to all blocks of spectrum, examine how they are used and what future needs will be. Large blocks of spectrum held by the broadcasters, satellite providers, federal government and public safety community need to be addressed in a comprehensive, deliberative manner, as well. Policymakers must scrutinize these incumbents for efficient use, just as those in industry have: current and future

needs, how efficiently they utilize what has already been allocated, etc. Flexibility should not be used as an excuse to avoid making tough spectrum decisions.

I thank the Committee for allowing me to be here today and again applaud the Spectrum Task Force for their Report. The Task Force proposes innovative and constructive means to address many of the shortfalls of historical spectrum planning and we look forward to hearing more detail in how to pursue real reforms. Thank you.